

CJSR
Claim 6. The canister of claim 4 further comprising a test device eject port formed in the front wall proximate the mounting flange.

CJSR
Claim 9. The canister of claim 1 comprising an indented sheet of plastic folded in half and sealed at a flange extending the full length of the canister at the juncture of the front wall and the five-section back wall.

REMARKS

In response to the outstanding Office Action dated December 19, 2002, Applicants have amended claims 4, 6, and 9. Clean form copies of the newly presented claims are herewith presented. Marked up copies of claims are attached on the final page.

Drawings – 37 CFR 1.83(a)

The drawings are objected to under 37 CFR 1.83(a) as failing to show the internal ribs recited in claim 3. Applicant draws the Examiner's attention to ribs 328 illustrated in FIG. 14B, taken in conjunction with page 36, line 23, as well as the reference to internal ribs in the Summary of the Invention, page 11, line 28. For the Examiner's convenience, a copy of FIG. 14B as originally filed is included with this communication and ribs 328 are circled in red. As such, Applicant respectfully requests that the objection to the drawings under 37 CFR 1.83(a) be withdrawn.

Claim Rejections – 35 USC §112, second paragraph

Claims 4-10 are rejected under 35 USC §112, second paragraph, as being indefinite. In response, claims 4, 6, and 9 have been amended so as to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 3 has been amended for the same reason. No new material has been added.

Claim 3 has been amended to make it plain that the internal ribs extend lengthwise along the interior of canister as seen in FIG. 14B.

Claim 4 has been amended so as to eliminate limitations related to shape of the flange. Reference to the mounting groove 331 (FIG. 1) within B/ID chamber 28 may be found on page 36 at line 25. Antecedent basis for rotor has been corrected.

Claim 6 has been amended so as to eliminate limitations related to size of the eject port.

Claim 9 has been amended as kindly suggested by the Examiner to specify that the flange is at the juncture of front and back walls.

Claim Rejections – 35 USC §103

Claims 1-2 are rejected under 35 USC §103(a) as being unpatentable over Abe (5,534,224) in view of Croteau et al (5,700,655). The Examiner is urging that it is obvious to replicate Applicant's invention by combining Abe's cartridge device for storing and dispensing rectangular film chips irrespective of their states of warp with the incubation plate of Croteau designed to allow liquid to be readily aliquoted between wells therein. Abe's cartridge is square, not generally hexagonally shaped with a five-section back wall as found in Applicant's claimed canister. Croteau states that "The shape of the incubation plate is not relevant" (Col 3, line 6). Thus there is no reason nor motivation whatsoever to re-shape Abe's square cartridge to hold an incubation plate that could also be rectangular. Furthermore, Croteau's objective is to make it possible for "unskilled people to rapidly determine the quantity of material in a sample" (Col 3, lines 64-5) and so it would oppose his objective to additionally require that the incubation plates be removed from a storage cartridge. A close reading fails to uncover any seen, suggested or even hinted reason or motivation within these two references to make such a combination and therefore Applicant respectfully suggests that the obviousness rejection of claims 1-2 over the Abe and Croteau devices is improper and should be withdrawn.

Claim 3 is rejected under 35 USC §103(a) as being unpatentable over Abe (5,534,224) in view of Croteau et al. (5,700,655) and further in view of Masterson et al. (5,645,800). In addition to the comments made above relative to an improper combination of the Abe and Croteau devices, Applicant points out that the internal ribs are formed parallel to the lengthwise dimension of Applicant's canister (elements 328 in sectional view 14B) in sharp contrast to Masterson's ledges which are formed perpendicular to the lengthwise dimension of Masterson's holding station. In other words, as normally used, Applicant's ridges are vertically oriented and Masterson's ledges are horizontally oriented. Thus it would be impossible for Masterson's horizontal ledges (slotted shelves) to imitate the form or function of Applicant's vertical ridges (secure the test devices within the canister against sidewise motion); therefore Applicant respectfully suggests that the obviousness rejection of claim 3 over Masterson taken with Abe and Croteau devices is improper and should be withdrawn. As noted above, claim 3 has been amended to make plain that the internal ribs extend lengthwise along the interior of canister as seen in FIG. 14B.

Claims 4-6 are rejected under 35 USC §103(a) as being unpatentable over Abe (5,534,224) and Croteau et al. (5,700,655) in view of Hendrix et al. (5,391,352). In addition to the comments made above relative to an improper combination of the Abe and Croteau devices, Applicant points out that Hendrix's element 62 is a foot (a lower horizontal base) to support a cuvette as it slides within a processor while Applicant's mounting flange is provided so as to secure a canister in a stable position. Thus it would be impossible for Hendrix's foot to imitate the form or function of Applicant's mounting flange (secure the canister within a chamber in a vertical orientation). Further, Applicant points out that Hendrix's upwardly extending element 96 functions as an anvil to receive a downward blow and form holes in sheet 42 (Col 4,lines 56-62) and similarly fails to imitate the form or stabilizing function of Applicant's mounting flange. For these reasons, Applicant respectfully suggests that the obviousness rejection of claims 4-6 over Hendrix taken with Abe and Croteau devices is improper and should be withdrawn.

Claims 7 and 8 are rejected under 35 USC §103(a) as being unpatentable over Abe (5,534,224), Croteau et al. (5,700,655) and Hendrix et al. (5,391,352) in view of Roberts et al. (5,871,696). In view of the comments made above relative to an improper combination of the Abe, Croteau and Hendrix devices, Applicant respectfully suggests that the obviousness

rejection of claims 7-8 over Roberts taken with the Abe, Croteau and Hendrix devices is also improper and should be withdrawn.

In each of the above obviousness rejections, the critical inquiry is whether "there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination." Fromson v. Advance Offset Plate, Inc., 755 F.2d 1549, 1558, 225 USPQ 26, 31 (Fed. Cir. 1985). In other words, obviousness "cannot be established by combining the teachings of the prior art, absent some teaching or suggestion supporting the combination." In re Fine, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1599 (Fed. Cir. 1988). Clearly, none of the applied references has any motivation to be combined with another reference and do not point the way to imitate the form nor function of Applicant's claimed canister. It is requested that all such rejections be withdrawn.

Conclusion

Applicant believes that this application contains patentable subject matter and that the foregoing amendments and explanation provide a basis for favorable consideration and allowance of all claims; such allowance is respectfully requested. If any matter needs to be resolved before allowance, the Examiner is encouraged to call Applicant's representative at the number provided below.

Respectfully submitted,



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MARKED UP VERSION OF THE APPLICATIONMARKED UP VERSION OF THE CLAIMS

Claim 3. (once amended) The canister of claim 1 further comprising a number of internal ribs extending lengthwise along the interior of the front walls and side walls to secure the test devices within the canister.

Claim 4. (once amended) The canister of claim 2 further comprising a mounting flange extending slightly below the bottom end portion [and shaped to seat into a mounting groove within an environmentally controlled chamber] so that the [rotor] canister may be secured within a [the] mounting groove in a vertical position.

Claim 6. (once amended) The canister of claim 4 further comprising a test device eject port formed in the front wall proximate the mounting flange [and sized to allow the lowermost test device within a plurality of test devices stacked one atop another within the canister to be pushed out of the canister by a plunger].

Claim 9. (once amended) The canister of claim 1 comprising an indented sheet of plastic folded in half and sealed at a flange extending the full length of the canister at the juncture of [between] the front wall and the five-section back wall.